

THE STATE OF NEW HAMPSHIRE

SUPREME COURT

In Case No. 2006-0451, Juniper Fells, LLC v. City of Concord, the court on April 10, 2007, issued the following order:

The petitioner, Juniper Fells, LLC (Juniper Fells), appeals an order of the superior court dismissing its appeal of the denial of a proposed eight-lot subdivision by the respondent, City of Concord (city). Juniper Fells argues that the trial court erred in finding that it lacked subject matter jurisdiction to consider the appeal and, in the alternative, failing to consider the appeal as a petition for writ of certiorari. We reverse and remand.

RSA 677:15 (Supp. 2004) provides that any person aggrieved by any decision of a planning board concerning a subdivision may appeal to the superior court within thirty days after the date upon which the board voted to approve or disapprove the application.

The trial court found that the planning board denied Juniper Fells' application for a waiver of a city ordinance on February 16, 2005, and its subsequent motion for reconsideration on April 20, 2005. The court then concluded that because Juniper Fells had not appealed that action within thirty days, the court lacked subject matter jurisdiction to review the case. See Route 12 Books & Video v. Town of Troy, 149 N.H. 569, 575 (2003) (compliance with statutory appeal period necessary prerequisite to establishing jurisdiction in superior court).

In this case, however, the cited findings are insufficient to determine whether the statutory appeal period had expired. A review of the certified record indicates that Juniper Fells' application for subdivision approval was tabled on February 16, 2005; it was reviewed again at the November 16, 2005 meeting of the Concord Planning Board. The board then approved a proposed six-lot subdivision that Juniper Fells had submitted as an alternative to its eight-lot subdivision. At all times during this review period, the city referenced the application with the same docket number.

Because the board did not "approve or disapprove" the application until November 16, 2005, the appeal period began to run on that date. RSA 677:15. To require that Juniper Fells appeal a decision of the planning board on its application while the application remained pending before the board would violate our policy against piecemeal appeals. See Appeal of Courville, 139 N.H. 119, 124 (1994). The excerpt from Juniper Fells' appeal to the superior court included in the appendix provided by the city indicates that the appeal was filed within the

thirty-day period. We therefore conclude that the trial court erred in dismissing the appeal for lack of subject matter jurisdiction.

Having reached this conclusion, we need not consider Juniper Fells' remaining arguments.

Reversed and remanded.

DALIANIS, GALWAY and HICKS, JJ., concurred.

**Eileen Fox,
Clerk**